

Supreme Court U. S.

FILED

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MICHAEL BDOAK, JR., CLERK

In The

**Supreme Court of the United States**

October Term, 1978

No. **78-389**

LESLIE KAYE, BARUCH GLOBERMAN, and SOL MAL-  
LOW, As Operators of the SANS SOUCI NURSING  
HOME; EMANUEL BIRNBAUM and DESDEMONA  
JONES, As Operators of the FIELDSTON LODGE  
NURSING HOME; and THE NEW YORK STATE  
HEALTH FACILITIES ASSOCIATION, INC., a New  
York Not-For-Profit Membership Corporation, Suing  
On Behalf Of Its Member Licensed Nursing Homes and  
Health Related Facilities Located Within The State of  
New York, Appellants,

— against —

ROBERT P. WHALEN, as Commissioner of Health Of The  
State of New York; and PETER GOLDMARK, as  
Director Of The Budget Of The State of New York,  
Appellees.

**On Appeal From The Court of Appeals  
Of The State of New York**

**BRIEF OF APPELLANTS IN OPPOSITION TO THE  
MOTION OF APPELLEES TO DISMISS OR AFFIRM**

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October, 1978

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## STATEMENT

This Brief is submitted on behalf of the Appellants in  
opposition to Appellees' motion, dated October 19, 1978,  
either to dismiss the appeal herein or to affirm the  
determination of the New York State Court of Appeals  
(that state's highest court.)

## QUESTION PRESENTED

Whether or not the state court decision appealed from can be sustained solely on nonfederal grounds?

## STATEMENT OF THE CASE

Appellants have appealed from a determination of New York's Court of Appeals upholding one of that state's statutes against Appellant's constitutional attack that

(1) the retroactive application of the statute impaired Appellants' pre-existing contractual rights with the State, and

(2) the statute violated the Supremacy Clause of the United States Constitution since it provided for a system of reimbursement of nursing homes participating in that State's Medicaid program on other than a reasonable cost-related basis after July 1, 1976, notwithstanding a specific federal statute, 42 USC §1396a (a) (13) (E) requiring cost-related reimbursement after July 1, 1976.

The State (Appellees) is now moving to dismiss the appeal or affirm the determination on the basis that the decision appealed from could be sustained solely on nonfederal grounds.

## THE DECISION BELOW COULD NOT BE SUSTAINED SOLELY ON NONFEDERAL GROUNDS

In their motion, Appellees argue that the decision appealed from could be based solely on nonfederal grounds, thereby precluding Appellants' right to appeal to

the U.S. Supreme Court. It is appropriate, therefore, to examine briefly the two major federal constitutional questions raised by Appellants and to determine whether the decision appealed from resolved the lawsuit on other grounds, thereby making it unnecessary to reach these two constitutional issues.

The first constitutional objection raised by Appellants relates to the impairment of the obligations of contract. The state court below did hold that the statute was retroactive, but ruled that the right allegedly violated by such retroactivity did not exist. Appellees seem to argue that the issue of whether a contractual right existed or not is solely a matter of state law, and if a state's highest court resolves that issue in the negative, U.S. Supreme Court jurisdiction is precluded since there is no contractual right which could have been impaired.

This Court has held on numerous occasions, however, that when a state statute is challenged on the grounds that it unconstitutionally impairs the obligations of contract, the U.S. Supreme Court has jurisdiction not only to decide whether a contractual right was impaired, but also the threshold question of whether there was, in fact, such a right under the contract. Funkhauser v. J. B. Preston Co., 290 U.S. 163 (1933); U.S. Mortg. Co. v. Matthews, 293 U.S. 232 (1934); Phelps v. Board of Education of Town of West New York, 300 U.S. 319 (1937). Moreover, in the instant case, the contractual right Appellants assert was violated is not just a contractual right provided for in an ordinary contract to be interpreted according to state law; it is instead a right set forth in an agreement (a so-called "provider agreement") that is required to be entered into under federal law; 42 USC §1396a (a) (27); and the right allegedly violated (the right to reasonable cost-related reimbursement) is a right required by federal statute as well. 42 USC §1396a (a) (13) (E). U.S. Trust Co. v. New Jersey, 97 S. Ct. 1505, 1516, n. 17 (1977).

The other federal constitutional question raised by Appellants relates to the Supremacy Clause. Appellants assert that the state statute challenged provided for reimbursement of nursing homes on other than a reasonable cost-related reimbursement after July 1, 1976 despite a federal law specifically requiring reimbursement on such a basis after that date. The decision appealed from does not even address that issue despite the fact that Appellants specifically raised the issues in all lower courts (see p. A-12 and p. A-28 of the Jurisdictional Statement). The Court of Appeals disposed of Appellants' argument on the grounds that a letter from an HEW bureaucrat apparently waived the July 1, 1976 deadline imposed by federal law. Appellants challenge the state court's interpretation of that letter, but in any event, the U.S. Supreme Court surely has authority to review a state's highest court's ruling which upholds the constitutionality of one of that state's statutes when, in order to do so, the state court has relied on a federal bureaucrat's letter purporting to amend the obvious meaning of the federal law so as to avoid the otherwise apparent inconsistency between that federal law and the state statute challenged. The issue presented is clearly one of federal constitutional dimensions.

THE MOTION OF APPELLEES TO DISMISS OR  
AFFIRM SHOULD BE DENIED AND THIS COURT  
SHOULD NOTE PROBABLE JURISDICTION OF THE  
APPEAL

Dated: October 23, 1978

Respectfully submitted,

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